

TAB 22

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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In re: PHARMACEUTICAL INDUSTRY :
AVERAGE WHOLESALE PRICE : MDL No. 1456
LITIGATION : Civil Action No.
: 01-12257-PBS
_____: Judge Patti B. Saris
: Magistrate Judge
United States of America ex rel. : Marianne B. Bowler
Ven-a-Care of the Florida Keys, :
Inc. v. Boehringer Ingelheim :
Corp., et al. CIVIL ACTION NO. :
07-10248-PBS : VOLUME II

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Continued Videotaped deposition of MARK SHAFFER
taken at the offices of Jackson Lewis LLP, 90 State
House Square, 8th Floor, Hartford, Connecticut 06103,
before Clifford Edwards, LSR, Connecticut

21 (Pages 351 to 354)

<p style="text-align: right;">351</p> <p>1 oxycodone 5-milligram?</p> <p>2 A. Again, just going off the bullet points</p> <p>3 on this particular slide and it has a breakdown of</p> <p>4 those points.</p> <p>5 Q. It indicates that the pharmacy profit</p> <p>6 margin would be \$29.15.</p> <p>7 Correct?</p> <p>8 A. Under this example and this scenario,</p> <p>9 that's what it's pointing out.</p> <p>10 Q. Okay. The next page has an example for</p> <p>11 the Roxicodone 15-milligram.</p> <p>12 A. Yes, it does.</p> <p>13 Q. It shows a profit of \$39.60?</p> <p>14 A. That's what it's showing on this slide.</p> <p>15 Yes.</p> <p>16 Q. Okay. Indicating, does it not, that the</p> <p>17 Roxicodone 15-milligram would be more profitable to</p> <p>18 the pharmacist?</p> <p>19 MS. RIVERA: Object to form.</p> <p>20 A. I can't speak on profit.</p> <p>21 But in these two scenarios, it's pretty</p> <p>22 straightforward the way the scenarios are broken</p>	<p style="text-align: right;">353</p> <p>1 category?</p> <p>2 A. I don't recall. No.</p> <p>3 Q. Okay. When you were, I'll call it, a</p> <p>4 basic level salesperson in the early part of the</p> <p>5 1990s, what was the title of that position again?</p> <p>6 A. It was regional director of</p> <p>7 pharmaceutical affairs.</p> <p>8 Q. Okay. But that was a basic salesperson</p> <p>9 --</p> <p>10 A. Yes.</p> <p>11 Q. -- in lay terms?</p> <p>12 A. Yes, it was.</p> <p>13 Q. When you were regional director of</p> <p>14 pharmaceutical affairs, were you required to fill</p> <p>15 out any kind of call sheet?</p> <p>16 A. What do you mean by "call sheets"?</p> <p>17 Q. When you called on a potential customer,</p> <p>18 did you have to fill out I called on X pharmacy on</p> <p>19 this date, and here's what we talked about, that</p> <p>20 kind of thing?</p> <p>21 A. Yes, we did.</p> <p>22 Q. Were those sheets kept?</p>
<p style="text-align: right;">352</p> <p>1 down.</p> <p>2 BY MS. POLLACK:</p> <p>3 Q. Now, if you look at the last page that</p> <p>4 has text in this presentation. There's a</p> <p>5 presentation that has the logo or may be a page</p> <p>6 that has -- right.</p> <p>7 There's some examples of objections that</p> <p>8 a salesperson might hear from a potential customer.</p> <p>9 Is that correct?</p> <p>10 A. I don't know the context of it.</p> <p>11 It does say objections and responses.</p> <p>12 Q. Okay. The second one says, "I carry one</p> <p>13 SKU in this category."</p> <p>14 What's an SKU?</p> <p>15 A. It's my understanding an SKU is the</p> <p>16 number assigned to a particular product.</p> <p>17 Q. To a product or type of drug?</p> <p>18 A. I'm not sure.</p> <p>19 I thought every product had an SKU.</p> <p>20 Q. Okay. Do you recall what the suggested</p> <p>21 response was if the salesman got an objection from</p> <p>22 a customer that I carry only one SKU in this</p>	<p style="text-align: right;">354</p> <p>1 A. From what I recall, there were forms that</p> <p>2 we filled out on a weekly basis and cards that had</p> <p>3 all of our physician contacts.</p> <p>4 And we had physician call goals. We</p> <p>5 filled out the cards and sent them in so that was</p> <p>6 the call reporting done on physicians.</p> <p>7 Q. What about for retail pharmacies?</p> <p>8 A. I don't recall.</p> <p>9 I don't think there were cards for the</p> <p>10 pharmacies. I think it was just for the</p> <p>11 physicians.</p> <p>12 Q. During the time that you were in the</p> <p>13 sales area, do you recall being asked to destroy</p> <p>14 sales training materials?</p> <p>15 A. Which time frame are you -- I mean, can</p> <p>16 you clarify which time frame?</p> <p>17 Q. From the early '90s to 2000?</p> <p>18 A. I don't recall specifically any pieces or</p> <p>19 programs that we were asked to destroy.</p> <p>20 Q. So Roxane didn't have a policy that after</p> <p>21 you went to a training meeting, you were supposed</p> <p>22 to destroy the materials you received?</p>

22 (Pages 355 to 358)

<p style="text-align: right;">355</p> <p>1 A. I don't recall, again, the specific ones.</p> <p>2 I recall generally that over time there</p> <p>3 may have been some communications on outdated</p> <p>4 materials or whatever, and marketing would send out</p> <p>5 what is the common practice to the field.</p> <p>6 But I don't recall specifics on which</p> <p>7 products or --</p> <p>8 Q. Would marketing send those memos out when</p> <p>9 the price changed, for example, and say destroy any</p> <p>10 old price sheets or something like that?</p> <p>11 A. I don't recall any memo along those</p> <p>12 lines. No.</p> <p>13 Q. Okay. You told us previously that toward</p> <p>14 the end of the year 2000, Roxane no longer had</p> <p>15 salespeople selling the Oramorph and the</p> <p>16 Roxicodone.</p> <p>17 Do you remember that testimony?</p> <p>18 A. Yes, I do.</p> <p>19 Q. How were those products distributed by</p> <p>20 Roxane at that time?</p> <p>21 A. I'm not sure what you mean by</p> <p>22 "distributed."</p>	<p style="text-align: right;">357</p> <p>1 tablet, how would I get it?</p> <p>2 A. You would order it from your wholesaler.</p> <p>3 Q. Who was marketing the product to the</p> <p>4 wholesaler in that time frame at Roxane?</p> <p>5 A. I can't speak for whatever happened after</p> <p>6 they dissolved our sales division.</p> <p>7 Q. Okay. But it is your understanding the</p> <p>8 product was available in the marketplace for some</p> <p>9 period of time?</p> <p>10 A. Again, I don't recall those products</p> <p>11 being withdrawn from the market.</p> <p>12 Q. Okay. All right.</p> <p>13 (THEREUPON, EXHIBIT SHAFFER 032,</p> <p>14 MEMO DATED 12/21/00, WAS MARKED</p> <p>15 FOR IDENTIFICATION.)</p> <p>16 BY MS. POLLACK:</p> <p>17 Q. Marking as Shaffer 32 a memo from Mr.</p> <p>18 Shaffer to the Roxane palliative care sales force</p> <p>19 dated December 21, 2000.</p> <p>20 It's marked Shaffer 001859 through 60.</p> <p>21 A. Okay.</p> <p>22 Q. Do you recall sending out this memo?</p>
<p style="text-align: right;">356</p> <p>1 Q. Didn't Roxane continue to sell those</p> <p>2 products to customers?</p> <p>3 A. It's my understanding that after our</p> <p>4 sales force was dissolved, that for a period of</p> <p>5 time, I don't know how long, those products were</p> <p>6 still on market. I don't recall those products</p> <p>7 coming off market.</p> <p>8 Q. And I'm asking: How were they</p> <p>9 distributed after that?</p> <p>10 Maybe that's not the right word, but how</p> <p>11 is it that they were sold after that period of</p> <p>12 time?</p> <p>13 A. They were sold by filling prescriptions</p> <p>14 the physicians wrote to the pharmacies.</p> <p>15 The pharmacies would fill prescriptions</p> <p>16 like they always did.</p> <p>17 Q. So Roxane was selling to the wholesalers,</p> <p>18 we can assume after that time?</p> <p>19 A. I believe Roxane always sold to the</p> <p>20 wholesalers.</p> <p>21 Q. If I was a pharmacist in January 2001 and</p> <p>22 I wanted a bottle of the Roxicodone 50-milligram</p>	<p style="text-align: right;">358</p> <p>1 A. I don't recall.</p> <p>2 Q. Okay. Do you have any reason to believe</p> <p>3 you didn't send out this memo?</p> <p>4 A. I -- I don't know.</p> <p>5 Q. Okay. The subject is PC promo materials.</p> <p>6 It asks each of the persons receiving it to sign a</p> <p>7 form indicating that "All Roxane Laboratories</p> <p>8 palliative care and manual sales, promotional</p> <p>9 materials, training binders, IMS DDD data, and hard</p> <p>10 copy account records have been destroyed."</p> <p>11 Is that correct?</p> <p>12 A. That's correct.</p> <p>13 Q. You have no recollection of sending this</p> <p>14 out?</p> <p>15 A. No. This is the time frame when the</p> <p>16 entire division was dissolved.</p> <p>17 Everybody was out of a job. I don't</p> <p>18 remember sending this out, but this obviously is</p> <p>19 something I may have sent out because of the</p> <p>20 division being dissolved.</p> <p>21 Q. Do you remember signing a document like</p> <p>22 this?</p>

23 (Pages 359 to 362)

<p style="text-align: right;">359</p> <p>1 A. I don't remember.</p> <p>2 Q. Okay. What is a hard copy account</p> <p>3 record?</p> <p>4 A. Hard copy account records, I believe</p> <p>5 would be binders where people kept information on</p> <p>6 their customers, account records.</p> <p>7 Q. Is that something an individual</p> <p>8 salesperson would keep in the course of his --</p> <p>9 A. I think --</p> <p>10 Q. -- business?</p> <p>11 A. -- most salespeople have some kind of</p> <p>12 records of their -- of their customers. Yes.</p> <p>13 Q. So there wasn't a company form called a</p> <p>14 hard copy account?</p> <p>15 A. Not that I recall.</p> <p>16 Q. Something like that?</p> <p>17 A. No.</p> <p>18 Q. What type of IMS DDD data is referred to</p> <p>19 her?</p> <p>20 A. I don't know specifically which data.</p> <p>21 But as I mentioned earlier IMS does</p> <p>22 provide DDD data which is pharmacy level data.</p>	<p style="text-align: right;">361</p> <p>1 MS. RIVERA: Okay. This is Maria Rivera.</p> <p>2 I'd like to take just a quick 10-minute -- 10- to</p> <p>3 15 minute break. And I have a short redirect to</p> <p>4 do. Then, we can wrap it up.</p> <p>5 THE VIDEOGRAPHER: Going off the record</p> <p>6 at 11:22.</p> <p>7 (THEREUPON, THERE WAS A RECESS</p> <p>8 TAKEN.)</p> <p>9 THE VIDEOGRAPHER: We are now back on</p> <p>10 record at 11:41.</p> <p>11 CROSS-EXAMINATION</p> <p>12 BY MS. RIVERA:</p> <p>13 Q. Mr. Shaffer, I just wanted to go back and</p> <p>14 clarify a few things that you discussed over today,</p> <p>15 and the last time we met for the record.</p> <p>16 I'm going to start with the documents and</p> <p>17 the issues that we talked about today. And then,</p> <p>18 I'll go back to a couple things we discussed during</p> <p>19 the first day of your deposition.</p> <p>20 A. Okay.</p> <p>21 Q. Okay. Let me hand you your exhibits so</p> <p>22 you have them.</p>
<p style="text-align: right;">360</p> <p>1 Q. Does DDD provide data on physicians --</p> <p>2 A. Yes.</p> <p>3 Q. -- too?</p> <p>4 A. IMS provides physician data.</p> <p>5 Q. DDD is a division or subsidiary --</p> <p>6 A. I believe it is, yes.</p> <p>7 Q. -- of IMS?</p> <p>8 MS. POLLACK: Okay. Why don't we take</p> <p>9 two minutes off the record?</p> <p>10 THE VIDEOGRAPHER: Going off the record</p> <p>11 at 11:20.</p> <p>12 (THEREUPON, THERE WAS A DISCUSSION</p> <p>13 OFF THE RECORD.)</p> <p>14 THE VIDEOGRAPHER: We are now back on the</p> <p>15 record at 11:21.</p> <p>16 MS. POLLACK: Thank you, Mr. Shaffer.</p> <p>17 I have no further questions at this time.</p> <p>18 I don't know if counsel on the phone have any</p> <p>19 questions.</p> <p>20 MR. WINGET-HERNANDEZ: This is Michael</p> <p>21 Winget-Hernandez. I have no questions at this</p> <p>22 time.</p>	<p style="text-align: right;">362</p> <p>1 If you could just go back to Shaffer 23</p> <p>2 which is the May 6, 1999, e-mail from John Powers</p> <p>3 regarding Oramorph pricing.</p> <p>4 Do you have that?</p> <p>5 A. Okay. I have it.</p> <p>6 Q. Okay. And I just wanted to clarify when</p> <p>7 -- what Mr. Powers is talking about here is a</p> <p>8 change to the contract prices of Oramorph.</p> <p>9 Is that correct?</p> <p>10 MR. FAUCI: Objection. Form.</p> <p>11 A. That's correct.</p> <p>12 BY MS. RIVERA:</p> <p>13 Q. Does it have anything to do or can you</p> <p>14 tell from this e-mail whether there were any</p> <p>15 changes to the AWP at that time for Oramorph?</p> <p>16 A. No.</p> <p>17 Q. Okay. That's all. On the next two</p> <p>18 exhibits were Shaffer 24 and 25 had to do with the</p> <p>19 launch of Azathioprine.</p> <p>20 Do you recall these?</p> <p>21 A. Yes, I have it here.</p> <p>22 Q. Okay. And you may have testified to</p>

24 (Pages 363 to 366)

<p style="text-align: right;">363</p> <p>1 this.</p> <p>2 But just so it's clear, do you have any</p> <p>3 recollection of you or your sales force promoting</p> <p>4 Azathioprine for Roxane?</p> <p>5 A. I don't recall it being one of the</p> <p>6 promoted products.</p> <p>7 Q. What do you mean by "one of the promoted</p> <p>8 products"?</p> <p>9 A. Our core promoted products that we spent</p> <p>10 obviously a lot of time on and we promoted to</p> <p>11 physicians.</p> <p>12 Q. Okay. And did your -- what type of</p> <p>13 products did your sales force and the Roxane sales</p> <p>14 force focus on?</p> <p>15 A. They were basically brand and branded</p> <p>16 generics.</p> <p>17 Q. Okay. And was Azathioprine either a</p> <p>18 brand or branded generic drug?</p> <p>19 A. No, just a generic drug.</p> <p>20 Q. Do you have any recollection of having</p> <p>21 any of your bonuses tied to the promotion or the</p> <p>22 sales of Azathioprine?</p>	<p style="text-align: right;">365</p> <p>1 A. I apologize. I'm having a hard time --</p> <p>2 Q. That's okay.</p> <p>3 A. -- getting to the launch update slide</p> <p>4 here.</p> <p>5 I have it.</p> <p>6 Q. Okay. And do you recall what year this</p> <p>7 was that these presentations were given in the</p> <p>8 launch of Roxicodone occurred?</p> <p>9 A. This was in 2000.</p> <p>10 Q. Okay. And what does this launch update</p> <p>11 slide reflect?</p> <p>12 A. It reflects different time lines for</p> <p>13 activities with the launch.</p> <p>14 Q. Okay. And does it show that the retail</p> <p>15 stocking would go from approximately September 22nd</p> <p>16 to November 10th?</p> <p>17 A. Yes. That's what it shows.</p> <p>18 Q. Okay. And then the last thing says that</p> <p>19 the beginning promotion to physicians would begin</p> <p>20 on November 13th?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Does that indicate that the sales</p>
<p style="text-align: right;">364</p> <p>1 A. I don't recall.</p> <p>2 Q. Okay. And can you clarify for me, did</p> <p>3 the Roxane sales force that you were on and you</p> <p>4 were an area manager for and director of have</p> <p>5 responsibility for selling to wholesalers or chain</p> <p>6 pharmacies?</p> <p>7 A. No, we did not.</p> <p>8 Q. Who was responsible for those sales?</p> <p>9 A. We had a trade group.</p> <p>10 Q. Okay. And that trade group was separate</p> <p>11 from your sales force?</p> <p>12 A. Yes, it was.</p> <p>13 Q. Okay. Okay. If you could take out</p> <p>14 Shaffer 27, which is the Doug Bieryl presentation</p> <p>15 on Roxicodone.</p> <p>16 Excuse me.</p> <p>17 A. I have it in front of me.</p> <p>18 Q. Okay. And I'm going to have the same</p> <p>19 problem Rose did.</p> <p>20 About halfway through, there is a slide</p> <p>21 that says "launch update." It has title "activity</p> <p>22 and implementation."</p>	<p style="text-align: right;">366</p> <p>1 to physicians or the promotion to physicians would</p> <p>2 occur only after this retail stocking effort</p> <p>3 occurred?</p> <p>4 A. Yes.</p> <p>5 I recall that was our strategy.</p> <p>6 Q. Okay. So is it consistent with your</p> <p>7 recollection that your sales force did not actually</p> <p>8 start promoting Roxicodone 15- and 30-milligram to</p> <p>9 physicians until around November 13th?</p> <p>10 A. That sounds correct.</p> <p>11 Q. Okay. And so prior to that time, there</p> <p>12 wouldn't be many prescriptions being written or</p> <p>13 filled for Roxicodone 15- or 30-milligrams?</p> <p>14 MS. POLLACK: Objection. Form.</p> <p>15 MR. FAUCI: Objection. Form.</p> <p>16 A. We did not start selling to the</p> <p>17 physicians until after we adequately -- we felt</p> <p>18 that retail stores were stocked.</p> <p>19 BY MS. RIVERA:</p> <p>20 Q. And do you know if there were any</p> <p>21 prescriptions that were written or filled prior to</p> <p>22 the time that it was promoted to physicians?</p>

28 (Pages 379 to 382)

<p style="text-align: right;">379</p> <p>1 to a few things, issues that were raised the first</p> <p>2 day of your deposition back in May.</p> <p>3 A. few times in your -- in your first</p> <p>4 day, you used the term "Boehringer Ingelheim."</p> <p>5 Which Boehringer Ingelheim entity were</p> <p>6 you referring when you said that?</p> <p>7 MS. POLLACK: Object.</p> <p>8 A. BIPI.</p> <p>9 MS. POLLACK: I'm going to object to</p> <p>10 form.</p> <p>11 But go ahead.</p> <p>12 BY MS. RIVERA:</p> <p>13 Q. What does BIPI stand for?</p> <p>14 A. Boehringer Ingelheim Pharmaceuticals,</p> <p>15 Incorporated.</p> <p>16 Q. In your day-to-day activities when you</p> <p>17 were a member of the Roxane sales force or you were</p> <p>18 the manager or director of the sales force, did you</p> <p>19 have interaction with any BIPI or Boehringer</p> <p>20 Ingelheim Corporation employees?</p> <p>21 A. No, I did not.</p> <p>22 Q. And the person that you reported to as a</p>	<p style="text-align: right;">381</p> <p>1 with BIPI or BIC employees?</p> <p>2 A. No, I did not.</p> <p>3 Q. And the entire time that you were with</p> <p>4 Roxane, were you in the sales department that</p> <p>5 entire time?</p> <p>6 A. Yes, I was.</p> <p>7 Q. Were you ever in -- in the marketing</p> <p>8 department?</p> <p>9 A. No, I wasn't.</p> <p>10 Q. And there was a separate marketing</p> <p>11 department.</p> <p>12 Correct?</p> <p>13 A. Yes, there was.</p> <p>14 Q. Were you ever in the contracts</p> <p>15 department?</p> <p>16 A. No, I was not.</p> <p>17 Q. Was there a separate contracts department</p> <p>18 at the time?</p> <p>19 A. Yes, there was.</p> <p>20 Q. Okay. Were you ever in the trade</p> <p>21 relations department?</p> <p>22 A. No, I wasn't.</p>
<p style="text-align: right;">380</p> <p>1 member of the Roxane sales team was a Roxane</p> <p>2 employee?</p> <p>3 A. Yes, he was.</p> <p>4 Q. And you considered yourself a Roxane</p> <p>5 employee at that time?</p> <p>6 A. Yes, I did.</p> <p>7 Q. And you received a Roxane paycheck?</p> <p>8 A. Yes, I did.</p> <p>9 Q. And did Roxane have a separate sales</p> <p>10 force from -- and I'll use the term BIPI?</p> <p>11 A. Yes, they did.</p> <p>12 MR. FAUCI: Objection. Form.</p> <p>13 BY MS. RIVERA:</p> <p>14 Q. Did Roxane have a separate marketing</p> <p>15 department at the time from BIPI?</p> <p>16 MS. POLLACK: Objection to form.</p> <p>17 A. Yes, they did.</p> <p>18 BY MS. RIVERA:</p> <p>19 Q. And other than the sales meetings that I</p> <p>20 think you mentioned there may have been a few BIPI</p> <p>21 employees at during the time you were on the Roxane</p> <p>22 sales force, did you have any other interaction</p>	<p style="text-align: right;">382</p> <p>1 Q. Okay. Did you have any involvement</p> <p>2 during your time at Roxane in setting the prices</p> <p>3 for Roxane products?</p> <p>4 A. No, I did not.</p> <p>5 Q. Okay. So you didn't have any involvement</p> <p>6 in setting the AWP's or the WAC's for the various</p> <p>7 Roxane products?</p> <p>8 A. No, I did not.</p> <p>9 Q. Did you have any involvement in changing</p> <p>10 the prices of any Roxane products?</p> <p>11 A. No, I did not.</p> <p>12 Q. Did you have any involvement in reporting</p> <p>13 any prices, Roxane product prices, to any third</p> <p>14 party pricing compendia?</p> <p>15 A. No, I did not.</p> <p>16 Q. Do you know which prices Roxane reported</p> <p>17 to the various pricing compendia?</p> <p>18 MR. FAUCI: Objection. Form.</p> <p>19 A. No, I do not.</p> <p>20 BY MS. RIVERA:</p> <p>21 Q. Do you know why Roxane reported prices to</p> <p>22 the various pricing compendia?</p>